



**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary file herein, the Appeals Board makes the following findings of fact and conclusions of law:

In the original February 19, 1999, Award, claimant was granted 3.2 weeks temporary total disability compensation at the rate of \$156.11 per week totaling \$499.55, followed by 33.46 weeks permanent partial disability compensation at the rate of \$156.11 per week totaling \$5,223.44 for a 17 percent permanent partial disability to the right lower extremity. The total award was \$5,722.99.

The evidence presented to the Administrative Law Judge included information regarding the amount of temporary total disability compensation and the amount of temporary partial disability compensation paid to claimant during the litigation of this matter. The amounts of temporary total and temporary partial disability were not at issue before the Board on appeal from the original award.

The matter was appealed to the Workers Compensation Board and, in its Order of May 25, 1999, the Board amended the Award to grant claimant 3.2 weeks temporary total disability compensation at the rate of \$156.11 per week totaling \$499.55, followed by 13.78 weeks permanent partial disability compensation at the rate of \$156.11 per week totaling \$2,151.20 for a 7 percent permanent partial scheduled injury to the right lower extremity, making the total award \$2,650.75. At oral argument before the Appeals Board, the parties reached an agreement regarding the credit issue wherein the Appeals Board will modify the May 25, 1999, Order to grant claimant a total of 3.48 weeks temporary total disability compensation, resulting in an additional payment by respondent to claimant of \$40.58.

With regard to claimant's request for post award attorney fees, the parties further stipulated that the Administrative Law Judge in his August 31, 1999, Order, and at the request of claimant's counsel, preserved the attorney fee issue for appeal. K.S.A. 1998 Supp. 44-555c obligates the Board to review questions of law and fact as presented and introduced before the Administrative Law Judge. The issue regarding claimant's request for attorney fees has not been presented to the Administrative Law Judge and no decision has been rendered by the Administrative Law Judge. Therefore, under K.S.A. 1998 Supp. 44-555c, there is no question of law or fact regarding those fees for the Appeals Board review. The parties agreed that this matter must be remanded to the Administrative Law Judge for consideration of claimant's request for post award attorney fees.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Jon L. Frobish dated August 31, 1999, should be, and is hereby, modified per the agreement of the parties. The respondent shall pay to claimant an additional \$40.58 in temporary total disability compensation benefits. The issue regarding claimant's entitlement to post award attorney fees is remanded back to the Administrative Law Judge for consideration.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 1999.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Steven R. Wilson, Wichita, KS  
D. Steven Marsh, Wichita, KS  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director